IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5952 OF 2007

Rajan Bhalchandra Datar ....Petitioner

Versus

The Nasik Peoples Co-op

Bank Ltd and Ors. ....Respondents

A L O N G W I T H

CIVIL APPLICATION NO. 2251 OF 2007

IN

WRIT PETITION NO. 5952 OF 2007

Rajan Bhalchandra Datar ....Petitioner

Versus

The Nasik Peoples Co-op

Bank Ltd and Ors. ....Respondents

Mr.Vaibhav Joglekar i/by. M/s. RES Legal for the petitioner.

H.S.Venegavkar, Adv for respondent no.1.

CORAM: S.C.DHARMADHIKARI, J.

23.11.2007

P.C. :

1. This petition under Article 227 of the Constitution of India challenges an order passed on the application for Amendment of the Written Statement. The petitioner had filed the said Application in a Dispute being Arbitration Case No.911 of 2002 pending on the file of the Learned Judge Co-operative Court, Nashik. Admittedly, the petitioner is an opponent to the said dispute and the other opponents are Respondent Nos.2 and 3.

2. That dispute is admittedly pending. In that dispute the petitioner filed Written Statement. In that Written Statement the petitioner raised number of pleas and ultimately prayed that the Dispute Application be dismissed.

3. An application was made by the petitioner for

amendment of the Written Statement and the proposed amendments are thus :-

> "21. After the Disputant filed the present suit, they have filed an application under Section 101 of the Maharashtra State Co.op Societies Act before the Deputy Registrar in respect of the present Dispute. After the filing of the said Application, the Disputant had filed a Purshis to that effect stating that the Disputant is not desirous of proceeding with the present proceedings. The Opponent has filed their say in respect of the said Purshis. Accordingly, the Opponent says and submits that the suit stands withdrawn or has abated and the Disputant has no right to prosecute the Dispute proceedings.
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> 22. The Disputant has submitted an Affidavit in a Writ Petition filed against it in the Bombay High Court wherein it is stated that the alleged loan pertaining t the present dispute has been given to Datar Switchgear. The Opponent says and submits that in the circumstances since Datar Switchgear Limited has not been made a party in the present Dispute and since they are a necessary party therein, the suit is liable to be dismissed for non-joinder of Datar Switchgear Limited.
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> 23. In the present suit, the purported documents are not registered. In the circumstances, the said aspect being a legal issue ought to be framed as such and the Opponent is therefore especially proposing the same. The Opponent submits that since the said documents are not registered, no rights or entitlements can be claimed by the Disputant thereunder and no claim can also be made by relying upon the same. The Opponent says and submits that on this account, all the original documents ought to be surrendered by the Disputant before this Hon’ble Court and

this Hon’ble Court thereafter ought to declare the said documents ab initio void, illegal and further declare all acts and proceedings adopted by the Disputant on the basis of such documents to be ad initio illegal and void and the ought to be rejected in limine. The Opponent says and submits that since the said question is a question of law, no stamp is required to be affixed separately. The Opponent says and submits that since the prayer as aforesaid by the Opponent pertains to legal disability of the Disputant, there is no applicability of limitation. The Opponent says and submits that under the Registration Act, this Hon’ble Court is required to take steps in respect of the impugned documents suo moto. The Opponent submits that he has brought the said facts and aspects on record before this Hon’ble Court for the said purpose and accordingly no court fee stamp is required to be affixed.

24. There is no relation of society and member between the Disputant and the Opponent and accordingly this Hon’ble Court has no jurisdiction to entertain the present Dispute. A preliminary issue ought to be framed on the aspect and the dispute filed by the Disputant ought to be dismissed with costs.

The prayer clause in the Written Statement to be numbered as "I" and the following new prayers to be added :

2. The Disputant be directed to surrender before this Hon’ble Court all original documents pertaining to the present dispute.

3. It be declared that all the said documents are ab initio void and illegal and further that the enforcement of the said documents cannot be granted.

4. It be declared that from the said documents the acts and proceedings adopted by the Disputant are illegal and unenforceable ab

initio.

5. The cost of the entire proceedings be awarded in favour of the Opponent. "

4. These amendments were disallowed after the respondent no.1/original disputant bank filed its reply-affdavit objecting to the same. The Learned Judge has rejected the Amendment Application on the ground that the dispute is filed in the year 2002 and the petitioner is trying to prolong the matter on one ground or the other. Further, despite observing that the proposed amendment raises issues based on law and can be considered without an amendment being made to the written statement, the application is rejected on the ground that the same is belated.

5. That order of the Learned Trial Judge has been maintained by the Co-operative Appellate Court and it proceeded to reject the petitioners Revision Application.

6. Impugning these orders, the petitioner has approached this court.

7. It is rather unfortunate that even this petition has been adjourned on a number of occasions. It appears that insofar as the amendments are concerned, the amendment proposing to incorporate para 21 in the written statement was subject matter of Writ Petition No. 6363 of 2006. That Writ Petition has dealt with an issue as to whether the First Respondent before me could have continued with the Dispute Application before the Co-operative Court after they filed an application under Section 101 of the Maharashtra Co-operative Societies Act. It is the case of the petitioner that after this application was filed, the First Respondent stated before the Trial Court that it is not desirous of proceeding with the Dispute Application. The petitioner also had filed their reply to the Application under Section 101 of the MCS Act, 1960. In such circumstances, the plea raised by the petitioner was that the dispute stands withdrawn or has abated. The Lower Appellate Court was inclined to go into this aspect and accepted the pleas of the petitioner. The first respondent aggrieved by this course of action challenged the same by instituting Writ Petition No. 6363 of 2006 which has been allowed

by the Learned Single Judge on 21.11.2006.

8. The petitioner before me who was the First Respondent in Writ Petition No. 6363 of 2006 could not convince the Learned Single Judge of this court that there is substance in his objection. Since that objection is turned down by this court, the petitioner in the present petition, who is the First Respondent in Writ Petition No. 6363 of 2006 has presented a Civil Application No. 2251 of 2007 which is pending.

9. Both sides do not dispute that all pleas as are proposed in the amendment and specifically those in paras 22 and 23 can be raised when the dispute is being heard and adjudicated upon. Both sides agree that the Written Statement may not be amended for the said purpose. Irrespective of the amendment applications being rejected, it is agreed by both sides that the plea raised in the proposed paras 22 and 23 of the Written Statement would be allowed to be raised and shall be dealt with by the Trial Court. Needless to state, that the Trial Court may consider framing a general issue with regard to the maintainability of the

proceedings and taking care of all pleas as are raised including non-joinder of M/s.Datar Switchgear Co. as a necessary party. Ofcourse, it would be for the petitioner to prove that M/s.Datar Switchgear Co. is a necessary party.

10. Presently, it is not necessary to observe anything with regard to the proposed amendments as made in para 21, inasmuch as, subject to the outcome of the Review Application, That plea may be raised and dealt with appropriately. In other words, even if that plea is sought to be raised by the present petitioner, the same would be dealt with and decided in the light of the observations of this court in Writ Petition No. 6363 of 2006. Needless to further state, that if there are any orders passed on the Review Application/Civil Application No.2251 of 2007, even they may be considered appropriately by the Trial Court.

11. In my view, considering the agreement between the parties, it is not necessary to interfere with the orders passed and impugned in this petition as they stand substituted and modified with the above

directions. The apprehension of the First Respondent Bank that the petitioner would delay the proceedings further by insisting upon an adjournment so as to await the outcome of the Review Application/Civil Application pending before this court can be taken care of by directing the Trial Court to hear and dispose off the same by the end of August 2008. All pleas on merits are kept open and no opinion is expressed thereon. Petition disposed off.

12. In so far as Civil Application No.2251 of 2007 is concerned, since it seeks review of an Order in W.P.No.6363 of 2006 office to seek appropriate directions for placing the same before the Learned Single Judge (Hon’ble Justice A.P.Deshpande).

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